



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/48004/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 October 2015

Decision & Reasons Promulgated  
On 30 October 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ZUCKER

Between

MR BAHMAN SABETI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Norman, Counsel instructed by Westkin Associates, London

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran whose date of birth is recorded as 15 July 1991. On 29 September 2014 he made a combined application for leave to remain as a Tier 4 (General) Student and for a biometric residence permit. On 6 November 2014 a decision was made to refuse the application and to remove him by way of directions having regard to Sections 47 of the Immigration, Asylum and Nationality Act 2006.
2. The refusal was made having regard to Paragraph 245ZX(d) of HC395 (as amended). In short, and there was no issue about this, having regard to Appendix C to the rules

the Appellant was required to show that he was in possession of £11,480.00 for a consecutive 28 day period dated no earlier than 31 days before the date of the application.

3. The Appellant sent with his application a letter from Bank Mellat dated 25 September 2014 stating that his father was a customer of the bank who maintained a current account with a balance, as at the time of writing of, 603,690.284 Rials (approximately £13,740). The same letter gave a total of debit and credit entries from 24 June 2014 to 25 September 2014 but did not state the credit balance for any one particular day.
4. The Appellant appealed to the First-tier Tribunal. On 8 May 2015 his appeal was decided, "on the papers" by Judge of the First-tier Tribunal K W Brown. Judge Brown was provided with a further document dated 19 November 2014 certifying that the credit balance of the account in question had been 650,000,000 Rials during the "last 28 days." Since the Appellant was required to show a credit balance for each of the 28 days in the consecutive period dated no earlier than 31 days before the date of the application the document could not assist the Appellant since the letter was dated significantly later than the date of the application.
5. Having regard to the evidence that was before her, Judge Brown found that the documentary evidence was insufficient as it did not comply with the requirements of the rules. She therefore dismissed the appeal.
6. Not content with the decision of the First-tier Tribunal, by Notice dated 25 June 2015 the Appellant made application for permission to appeal to the Upper Tribunal. The grounds submitted that the document of 25 September 2014 gave the turnover of the account though not the daily balance as required. However, the Appellant pointed to the actual wording used in the refusal in which it was said that, "The document does not show clear evidence of the balance of the account throughout the entirety of a period of 28 consecutive days." Given that wording, the Appellant contended that the Secretary of State was accepting that there was evidence, it was just that it was not "clear" and so she should have applied her evidential flexibility policy guidance and paragraph 245AA of HC395 (as amended). On 8 September 2015 Judge of the First-tier Tribunal Colyer granted permission thus the matter comes before me.
7. Paragraph 245AA relevant for the purposes of this appeal (there have been subsequent amendments) provides as follows:
  - "a) Where Part 6A of any appendices referred to in Part 6A state that specified documents must be provided, the UK Border Agency will only consider documents that have been submitted with the application, and will only consider documents submitted after the application where they are submitted in accordance with Sub Paragraph(b).
  - b) If the applicant has submitted:
    - i) A sequence of documents and some of the documents in the sequence have been omitted (for example, if one bank statement from a series is missing);

- ii) A document in the wrong format; or
- iii) A document that is a copy and not an original document,

The UK Border Agency may contact the applicant or his representative in writing and request the correct documents. The requested documents must be received by the UK Border Agency at the address specified in the request within seven working days of the date of the request.

- c) The UK Border Agency will not request documents where a specified document has not been submitted (for example an English language certificate is missing), or where the UK Border Agency does not anticipate that addressing the omission or error referred to in Sub Paragraph (d) will lead to a grant because the application will be refused for other reasons.
- d) If the applicant has submitted a specified document:
  - i) In the wrong format, or
  - ii) That is a copy and not an original document,

The application may be granted exceptionally, providing the UK Border Agency is satisfied that the specified documents are genuine and the applicant meets all the other requirements. The UK Border Agency reserves the right to request the specified original documents in the correct format in all cases where (b) applies, and to refuse applications if these documents are not provided as set out in (b)."

8. One of the requirements of the rule at Appendix C is that the bank statement or statements must show that, "the funds in the account have been at the required level throughout the specified period."
9. Ms Norman began by accepting that the letter of 19 November 2014 could not be relevant to the matters under consideration because it post-dated the date of the application and could only be interpreted as relating to the level of funds after and not before the date of the application. Reliance was therefore placed entirely on the letter of the bank of 25 September 2014.
10. As to Paragraph 245AA, Ms Norman relied on "(b)(ii) and (d)." It was her submission that the document met the requirements of the rule in that it evidenced sufficient funds over a 28 day period but was in the wrong format. She invited me to look to the credit balance of 603,690,284 Rials and find that even if one were to deduct the debit balance of 4,019,087,421 it would not be possible for there to have been any less than the required minimum on any one day. However Ms Norman was obliged to abandon that point when Mr Avery observed that she had misread the figures. Whereas the credit balance over the period of 13 May 2007 to 25 September 2014 began with a figure in excess of 603 million Rials the debit figure began with a figure in excess of 4 billion Rials. Nevertheless Ms Norman persisted with her submission that the figures did not necessarily mean that the Appellant did not have the requisite amount of money on any one of the 28 days in question and further enquiry by application of the evidential flexibility would have enabled the

Appellant to provide evidence to demonstrate that the rule was met. She accepted that she was not now able to place before the tribunal further evidence to demonstrate whether or not in fact had the evidential flexibility policy been followed as she contended it should have been, that the Appellant would have had the requisite evidence because that would be post decision evidence and inadmissible. Her submission was that as the Immigration Judge was faced with a document which was defective only because it was in the wrong format, the appeal should have been allowed on the basis that the Secretary of State had not considered her flexibility policy and the matter should have been remitted.

11. In my judgment this appeal is without merit. The fact that the Secretary of State has used the words “clear evidence” cannot, on the facts of this case be interpreted to mean that the evidence was sufficient but in the wrong format. The ordinary meaning in the context as used was that there was no sufficient evidence. In my judgment the evidence was wholly inadequate. I refer to the case of *EK (Ivory Coast) v Secretary of State for the Home Department [2014] EWCA Civ 1517* in which Sales LJ said:

“The points based system is intended to simplify the procedure for applying for leave to enter or remain in the United Kingdom in certain classes of case, such as economic migrants and students. This is to enable the Secretary of State to process high volumes of applications in a fair and reasonably expeditious manner, according to clear objective criteria. This is in the interests of all applicants. It also assists applicants to know what evidence they have to submit in support of an application.”

12. In my judgment the document relied upon of 25 September 2014 is not a document in the wrong format it is a document which does not evidence that which is required. It is clear that what is required is evidence of the balance on the account for each of 28 consecutive days. This document simply evidences the balance on one day and there is no sufficient basis, in my judgement for looking to that document and saying that the Secretary of State was put on notice that the figures could not on any particular day have fallen below the minimum required for the reasons Mr Avery pointed out namely that Ms Norman had misread the figures. This is not even an account which shows an opening balance but rather simply one figure for one date. The Secretary of State is afforded a wide discretion in 245AA(c) of the rules and in my judgment there was no sufficient evidence for saying that the Secretary of State should have anticipated that addressing the omission referred to, which in this case was not simply to provide a document in the wrong format but in fact, in my judgment a wholly inadequate document, addressing the omission or error, would lead to a grant. The format of the documents is set out at 7(iv) of Appendix C. That provides that statements must be either:

- “1) Printed on the bank’s or building society’s letterhead,
- 2) Electronic bank or building society statements... accompanied by a supporting letter from the bank or building society, on company headed paper, confirming the statement provided it is authentic, or
- 3) Electronic bank or building society statements ... bearing the official stamp of the bank or building society on every page.”

Further at (5) the statements must not be mini statements from automatic teller machines (ATMs).”

13. It is to that kind of matter to which the term “wrong format” in 245AA(d)(ii) or (d)(i) is to be considered and not as I have said a document which is wholly lacking in evidencing that which is required within the rule. What has to be “clear” is that on the face of the evidence actually submitted any enquiry made by the Secretary of State in following the evidential flexibility policy under the rules is reasonable likely to produce the evidence that is lacking. I find as a fact that this was not the case here and Judge Brown was also right to so find.
14. In all the circumstances this appeal fails.

**Notice of Decision**

The appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal is affirmed.

**Signed**

**Date**

**Deputy Upper Tribunal Judge Zucker**